

# ARKANSAS SUPREME COURT

## PROCEEDINGS OF OCTOBER 17, 2019

### **KAREN R. BAKER, JUSTICE**

[CV-19-285](#). Roy Lee Russell v. Wendy Kelley, Director, Arkansas Department of Correction, from Chicot County Circuit Court. Appellant's pro se motion to supplement the record. Appeal dismissed; motion moot.

### **COURTNEY RAE HUDSON, JUSTICE**

[CR-08-151](#). Shequita L. Joiner v. State of Arkansas, from Columbia County Circuit Court. Petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. Petition denied. Hart, J., dissents.

[CV-19-90](#). D'Angelo Allen v. State of Arkansas and Wendy Kelley, Director, Department of Correction, from Lee County Circuit Court. Petitioner's pro se motions for belated appeal, for rule on clerk, and in support of filing belated appeal treated as motions for belated appeal and denied, motions to correct circuit court order and for briefing schedule and appointment of counsel, and for extension of brief time moot. Hart, J., dissents.

### **JOSEPHINE LINKER HART, JUSTICE**

[CV-19-233](#). Charles Edward Jones, Sr. v. Hon. Quincey Ross, Circuit Judge, from Chicot County Circuit Court. Petitioner's pro se petition for writ of mandamus; and respondent's motion for permission to file second amended response to petition for writ of mandamus. Amended response requested; motion granted. Wood, J., dissents without written opinion.

### **RHONDA K. WOOD, JUSTICE**

[CV-19-74](#). Leonard Noble v. State of Arkansas, from Hot Spring County Circuit Court. Appellant's motion to include supplemental addendum in reply brief. Affirmed; motion moot. Hart, J., dissents.

### **ROBIN F. WYNNE, JUSTICE**

[CR-18-460](#). Andwelle Sied Ellis v. State of Arkansas, from Jackson County Circuit Court. Affirmed in part; reversed and remanded in part. Hart, J., concurs. Womack, J., dissents in part and concurs in part.

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**PER CURIAM ORDERS**

**REVIEWS DENIED:** Petitions for review were denied today in the following cases.

CR-18-546. Kwasi Andrade McKinney v. State of Arkansas, from Columbia County Circuit Court. Hart, J., would grant.

CR-18-605. Latosha Deann Lee v. State of Arkansas, from Woodruff County Circuit Court. Hart, J., would grant.

CR-19-443. Markevious King v. State of Arkansas, from Pulaski County Circuit Court, Fourth Division. Hart, J., would grant.

CV-19-101. George E. Kincade v. Chicot Memorial Medical Center; Misty Rogers, RN; Paulette Lirette, LPN; and Dr. Viviana Suarez, M.D., from Chicot County Circuit Court. Hart, J., would grant. Wood, J., not participating.

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CR-01-884. Erik James Bullock v. State of Arkansas, from Pulaski County Circuit Court, Seventh Division. Petitioner's motion to reinvest the trial court with jurisdiction to consider a petition for writ of error coram nobis is denied. Hart, J., would take as a case.

CR-18-706. LaJason Jaquize Coakley v. State of Arkansas, from Miller County Circuit Court. Appellant's pro se petition for writ of certiorari to complete the record is denied. Hart, J., would moot.

CR-19-383. Sammie L. Thomas, Jr. v. State of Arkansas, from Faulkner County Circuit Court. Appellant's motion to substitute brief is granted. Special Justice Tiffany Milligan Brown agrees. Wood, J., not participating.

CR-19-383. Sammie L. Thomas, Jr. v. State of Arkansas, from Faulkner County Circuit Court. Appellee's motion for writ of certiorari to complete the record and for an extension of brief time is granted. Special Justice Tiffany Milligan Brown agrees. Wood, J., not participating.

CR-19-403. Dennis Matthews v. Hon. Wendell Griffen, Circuit Judge, from Pulaski County Circuit Court, Fifth Division. Petitioner's pro se petition for rehearing pursuant to Arkansas Supreme Court Rule 2-3 treated as motion for reconsideration and denied. Hart, J., would moot.

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CR-19-643. Laron Hayes, Jr. v. State of Arkansas, from Bradley County Circuit Court. Motion of Timothy R. Leonard to be relieved and for appointment of new counsel is granted.

CR-19-714. Shawn G. Curtis v. State of Arkansas, from Saline County Circuit Court. Appellant's motion for belated appeal is granted.

CR-19-741. Cleveland Earl Smith, Jr. v. State of Arkansas, from Faulkner County Circuit Court. Appellant's motion for rule on clerk is granted. Baker, J., would deny.

CV-18-410. James E. Whitney v. David M. Hogue, from Lincoln County Circuit Court. Appellant's pro se motion to proceed with exception to Arkansas Supreme Court Rule 4-7 is denied.

CV-18-410. James E. Whitney v. David M. Hogue, from Lincoln County Circuit Court. Appellant's pro se notice and advisement (motion to file nonconforming brief) is denied.

CV-19-521. In Re Hon. Wendell Griffen, Circuit Judge for the Sixth Judicial Circuit, Fifth Division, an Original Action. Petitioner's pro se motion for reconsideration is denied. Hart, J., not participating.

CV-19-550. Paul M. Gordon v. Hon. Eddy Easley, Circuit Judge, from Hot Spring County Circuit Court. Petitioner's pro se petition for writ of mandamus is denied.

CV-19-641. Safe Surgery Arkansas, a Ballot Question Committee; and Sponsor, Laurie Barber, M.D., Individually and on Behalf of Safe Surgery Arkansas v. John Thurston, in His Official Capacity as Secretary of State for the State of Arkansas; State of Arkansas; Arkansans for Healthy Eyes, A Ballot Question Committee; and Vicki Farmer, Individually and on Behalf of Arkansans for Healthy Eyes, An Original Action. Intervenors' motion to supplement the record is granted.

CV-19-641. Safe Surgery Arkansas, a Ballot Question Committee; and Sponsor, Laurie Barber, M.D., Individually and on Behalf of Safe Surgery Arkansas v. John Thurston, in His Official Capacity as Secretary of State for the State of Arkansas; State of Arkansas; Arkansans for Healthy Eyes, A Ballot Question Committee; and Vicki Farmer, Individually and on Behalf of Arkansans for Healthy Eyes, An Original Action. Intervenors' second motion to supplement the record is granted.

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CV-19-641. Safe Surgery Arkansas, a Ballot Question Committee; and Sponsor, Laurie Barber, M.D., Individually and on Behalf of Safe Surgery Arkansas v. John Thurston, in His Official Capacity as Secretary of State for the State of Arkansas; State of Arkansas; Arkansans for Healthy Eyes, A Ballot Question Committee; and Vicki Farmer, Individually and on Behalf of Arkansans for Healthy Eyes, An Original Action. Intervenor's third motion to supplement the record is denied. Baker, Hart, and Wynne, JJ., would grant.

CV-19-641. Safe Surgery Arkansas, a Ballot Question Committee; and Sponsor, Laurie Barber, M.D., Individually and on Behalf of Safe Surgery Arkansas v. John Thurston, in His Official Capacity as Secretary of State for the State of Arkansas; State of Arkansas; Arkansans for Healthy Eyes, A Ballot Question Committee; and Vicki Farmer, Individually and on Behalf of Arkansans for Healthy Eyes, An Original Action. Respondent's motion to supplement the record is denied. Baker, Hart, and Wynne, JJ., would grant.

CV-19-641. Safe Surgery Arkansas, a Ballot Question Committee; and Sponsor, Laurie Barber, M.D., Individually and on Behalf of Safe Surgery Arkansas v. John Thurston, in His Official Capacity as Secretary of State for the State of Arkansas; State of Arkansas; Arkansans for Healthy Eyes, A Ballot Question Committee; and Vicki Farmer, Individually and on Behalf of Arkansans for Healthy Eyes, An Original Action. Motion of American Optometric Association for leave to file brief of amicus curiae in support of the respondent's position is granted. Hudson, J., would deny.

CV-19-713. Robinson Nursing and Rehabilitation Center, LLC, d/b/a Robinson Nursing and Rehabilitation Center; Central Arkansas Nursing Centers, Inc.; Nursing Consultants, Inc.; and Michael Morton v. Andrew Phillips, as Personal Representative of the Estate of Dorothy Phillips, and on Behalf of the Wrongful Death Beneficiaries of Dorothy Phillips; and on Behalf of Themselves and All Others Similarly Situated, from Pulaski County Circuit Court, Sixth Division. Petitioners' Ark. R. App. P. –Civ. 2(f) petition for permission to appeal is denied. Special Justice Gregory Vardaman agrees. Hart and Womack, JJ., would grant. Wood, J., not participating.

CV-19-719. Jason Michael Miller and Kerry Ann Miller v. CitiMortgage, Inc.; Federal National Mortgage Association; Re/Max Arkansas a/k/a The Williams Group a/k/a Jonesboro Homes a/k/a Re/Max Real Estate Centre, from Greene County Circuit Court. Appellants' motion for rule on clerk is denied. Hart, J., would grant.

CV-19-721. Jimmy Ames-Lovett v. Tony Foshe and Rachel Foshe, from Washington County Circuit Court. Appellees' motion to dismiss appeal transferred to the Court of Appeals. Kemp, C.J., and Womack, J., would grant. Hart, J., would deny.

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CV-19-740. Cassidy Jackson v. Arkansas Department of Human Services and Minor Child, from Madison County Circuit Court. Appellant's motion for belated appeal is granted.

D-19-747. In Re Armstrong Walters, Arkansas Bar No. 92092, an Original Action. Petition of Armstrong Walters, Arkansas Bar No. 92092, for voluntary surrender of license (resignation) is granted.

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CR-19-17. Randall T. McArty v. State of Arkansas, from Clark County Circuit Court. Appellant's pro se motion to supplement the record is denied. Hart, J., would grant.

CR-19-254. Jacob Jerome Taylor v. State of Arkansas, from Pulaski County Circuit Court, Fourth Division. Appellant's pro se second motion for belated brief is denied. Hudson and Womack, JJ., would moot. Hart, J., would grant.

CR-19-404. Leighton R. James v. State of Arkansas, from Garland County Circuit Court. Appellee's motion to dismiss appeal is granted.

CR-19-421. Robert Woodward v. State of Arkansas, from Chicot County Circuit Court. Appellant's pro se motion to file belated brief is granted.

CR-19-427. Corderro Foster v. State of Arkansas, from Jefferson County Circuit Court. Appellee's motion to dismiss appeal is granted.

CR-19-547. Conray Carroll v. State of Arkansas, from Pulaski County Circuit Court, Second Division. Appellant's pro se motion for appointment of counsel is denied.

CR-19-547. Conray Carroll v. State of Arkansas, from Pulaski County Circuit Court, Second Division. Appellant's pro se notice of belated appeal treated as a motion to file a belated brief and granted. Wood and Womack, JJ., would deny.

CR-19-563. Carl Prince v. State of Arkansas, from Sebastian County Circuit Court, Fort Smith District. Appellant's pro se motion for extension of time to file brief is granted.

CR-19-618. Derrick L. Booth v. Hon. Wendell Griffen, Circuit Judge, from Pulaski County Circuit Court, Fifth Division. Petitioner's pro se petition for writ of mandamus is moot. Kemp, C.J., and Wood and Wynne, JJ., would deny.

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CR-19-637. Justin J. East v. State of Arkansas, from Crittenden County Circuit Court. Petitioner's pro se motion for belated appeal is dismissed. Hart, J., would grant. Wood and Womack, JJ., would deny.

CV-18-660. Joe Perry, Jr. v. Officer Gary Nalls, from Chicot County Circuit Court. Appellee's motion to dismiss appeal is granted.

CV-18-761. Larry Gene Burks v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellee's motion to dismiss appeal is granted.

CV-18-817. James Wright v. Sgt. Wallace, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellee's motion to dismiss appeal is granted.

CV-19-56. Rolandis Chatmon v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant's pro se motion for use of the appeal record or, in the alternative, motion for waiver of addendum obligation is granted. Wood, J., not participating.

CV-19-56. Rolandis Chatmon v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant's pro se motion for an extension of time to file brief is granted. Wood, J., not participating.

CV-19-252. Dexter Harmon v. Moses Jackson, Randy Watson, and Flora Washington, from Jefferson County Circuit Court. Appellees' motion to dismiss the appeal is granted.

CV-19-430. Gary Wayne Fuller v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellee's motion to dismiss appeal is granted.

CV-19-558. Sammy Spencer v. John Felts, Chairman, Arkansas Board of Parole, from Pulaski County Circuit Court, Sixth Division. Petitioner's pro se motion for extension of time to file brief is granted.

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CV-19-663. Willie Gaster Davis, Jr. v. Wendy Kelley, Director, Arkansas Department of Correction; James DePriest, Legal Counsel, Arkansas Department of Correction; Leslie Rutledge, Arkansas Attorney General; Joyce Gooley, Mailroom Supervisor of Maximum Security; and Brandace Binns, Corporal Security of Maximum Security, from Jefferson County Circuit Court. Appellant's pro se motion for belated appeal/motion for rule on clerk is granted. Hart, Wood, and Womack, JJ., would moot.

CV-19-663. Willie Gaster Davis, Jr. v. Wendy Kelley, Director, Arkansas Department of Correction; James DePriest, Legal Counsel, Arkansas Department of Correction; Leslie Rutledge, Arkansas Attorney General; Joyce Gooley, Mailroom Supervisor of Maximum Security; and Brandace Binns, Corporal Security of Maximum Security, from Jefferson County Circuit Court. Appellant's amended pro se motion for belated appeal/motion for rule on clerk is granted. Wood and Womack, JJ., would deny.

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**MOTIONS SUBMITTED**

**PETITION FOR REHEARING:**

CR-18-816. Derrick A. Dixon v. State of Arkansas, from Union County Circuit Court.

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CR-98-1167. Ricky Lee Scott v. State of Arkansas, from Cross County Circuit Court. Petitioner's pro se petition for reconsideration.

CR-98-1167. Ricky Lee Scott v. State of Arkansas, from Cross County Circuit Court. Petitioner's pro se amended motion to supplement the record.

CR-19-257. Scotty Ray Gardner v. State of Arkansas, from Faulkner County Circuit Court. Appellant's motion for leave to file enlarged brief.

CR-19-514. Anthony Fowlkes v. State of Arkansas, from Faulkner County Circuit Court. Appellant's motion to file brief under seal.

CR-19-745. Matthew Armstrong v. State of Arkansas, from Searcy County Circuit Court. Motion of Matthew McKay to be relieved as counsel for appeal.

CR-19-748. Zachary L. Atwood v. State of Arkansas, from Faulkner County Circuit Court. Motion of Lynn F. Plemmons to be relieved as attorney for appellant and to stay briefing schedule.

CR-19-756. Robert Jamar Fields v. State of Arkansas, from Union County Circuit Court. Appellant's motion for belated appeal.

CV-17-385. Russell Berger v. Wendy Kelley, Director, Arkansas Department of Correction, from Jefferson County Circuit Court. Joint motion to dismiss appeal with prejudice.

CV-18-246. Russell Berger v. James Gibson, Warden, Varner Supermax, from Lincoln County Circuit Court. Joint motion to dismiss appeal with prejudice.

CV-18-400. Willie Hutcherson v. Deputy Warden Dycus, from Lee County Circuit Court. Appellees' motion to dismiss appeal and motion to strike appellant's brief.



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**MOTIONS SUBMITTED**

CV-19-318. Roby Clifton Davis v. PennyMac Loan Services, LLC, from the United States Bankruptcy Court, Western District of Arkansas. Motion of W. Scott Hastings and Daron L. Janis to participate in proceedings pro hac vice.

CV-19-739. State of Arkansas; Arkansas Department of Finance and Administration; Alcoholic Beverage Control Administration; and Arkansas Medical Marijuana Commission v. Carpenter Farms Medical Group, LLC, from Pulaski County Circuit Court, Fifth Division. Appellants' motion to supplement the record.

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CR-93-1127. Terry Swanigan v. State of Arkansas, from Pulaski County Circuit Court, Fourth Division. Petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

CR-93-1127. Terry Swanigan v. State of Arkansas, from Pulaski County Circuit Court, Fourth Division. Petitioner's pro se motion to supplement the pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

CR-12-588. Jackie Breeden, Jr. v. State of Arkansas, from Benton County Circuit Court. Petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

CR-14-484. Stanley Ray Hunt II v. State of Arkansas, from Faulkner County Circuit Court. Petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

CR-16-778. Tyrun Lamont Jones v. State of Arkansas, from Pulaski County Circuit Court, Fourth Division. Petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

CR-17-17. Darryl Talley, Jr. v. State of Arkansas, from Pulaski County Circuit Court, First Division. Petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

CR-17-537. Calvin Thornton v. State of Arkansas, from Pulaski County Circuit Court, Seventh Division. Petitioner's pro se petition to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

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**MOTIONS SUBMITTED**

CR-17-537. Calvin Thornton v. State of Arkansas, from Pulaski County Circuit Court, Seventh Division. Petitioner's pro se motion for leave to reply to State's response to motion to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis.

CR-18-546. Kwasi Andrade McKinney v. State of Arkansas, from Columbia County Circuit Court. Appellant's pro se motion for court file at public expense.

CR-18-555. Edward Joseph Reynolds v. State of Arkansas, from Grant County Circuit Court. Appellee's motion to dismiss appeal.

CR-18-705. Howard Lee Leach v. State of Arkansas, from Washington County Circuit Court. Appellant's pro se motion to supplement the record.

CR-18-915. Walker M. Smith v. State of Arkansas, from Desha County Circuit Court. Petitioner's pro se motion for belated appeal.

CR-19-666. Sanders Carter v. State of Arkansas, from Pulaski County Circuit Court, Fourth Division. Appellant's pro se motion for appointment of counsel on appeal and for stay of proceedings.

CR-19-749. Jason Wheat v. State of Arkansas, from Faulkner County Circuit Court. Petitioner's pro se motion to grant belated Rule 37.1 appeal.

CR-19-749. Jason Wheat v. State of Arkansas, from Faulkner County Circuit Court. Petitioner's pro se motion for appointment of counsel.

CR-19-749. Jason Wheat v. State of Arkansas, from Faulkner County Circuit Court. Petitioner's pro se motion for leave to enter exhibits.

CV-19-3. Otis D. Gipson v. State of Arkansas and Wendy Kelley, Director, Arkansas Department of Correction, from Pulaski County Circuit Court, Sixth Division. Appellant's pro se motion to file belated reply brief.

CV-19-103. Robert Fortier v. Wendy Kelley, Director, Arkansas Department of Correction, from Jefferson County Circuit Court. Appellee's motion to dismiss appeal.

CV-19-223. Hollis Devin Martz v. John Felts, Chairman, Arkansas Parole Board, from Jefferson County Circuit Court. Appellant's pro se motion to file supplemental brief.

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**MOTIONS SUBMITTED**

CV-19-261. Jessie Hill v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant's pro se motion for writ of mandamus order.

CV-19-261. Jessie Hill v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant's pro se motion for writ of mandamus and to file appeal minus certain document.

CV-19-261. Jessie Hill v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant's pro se motion to proceed without a complete record and to file a non-conforming brief.

CV-19-261. Jessie Hill v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant's pro se motion for relief, concise statement, and temporary restraining order.

CV-19-429. William Mack Eubanks v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellee's motion to dismiss appeal.

CV-19-658. Alvin E. Lovelace v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant's pro se motion for extension of time.

CV-19-658. Alvin E. Lovelace v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant's pro se motion for access to the court records.

CV-19-667. Rico Benton v. Wendy Kelley, Director, Arkansas Department of Correction, from Lincoln County Circuit Court. Appellant's pro se motion for access to copy of record on appeal for briefing purposes and for extension of time to file pro se brief.

CV-19-669. Trencie V. Oliver v. State of Arkansas, from Lee County Circuit Court. Petitioner's pro se motion for belated appeal.

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**CASES SUBMITTED**

CR-18-1029. Travis Price v. State of Arkansas, from Jefferson County Circuit Court.

CR-18-839. Benjamin Ledwell v. State of Arkansas, from Hot Spring County Circuit Court.

CR-19-15. Shaniqua Finley v. State of Arkansas, from Pulaski County Circuit Court, First Division.

CR-19-248. Gerald Herbert Lowery v. State of Arkansas, from Miller County Circuit Court.

CV-18-400. Willie Hutcherson v. Deputy Warden Dycus, from Lee County Circuit Court.

CV-18-45. Robinson Nursing and Rehabilitation Center, LLC; Central Arkansas Nursing Centers, Inc.; Nursing Consultants, Inc.; and Michael Morton v. Andrew Phillips, as Personal Representative of the Estate of Dorothy Phillips, and on Behalf of the Wrongful Death Beneficiaries of Dorothy Phillips; and on Behalf of Themselves and All Others Similarly Situated, from Pulaski County Circuit Court, Sixth Division.

CV-18-992. James Craig Carlock, Individually, and as a Representative of a Class of Persons Similarly Situated v. The City of Blytheville, Arkansas, from Mississippi County Circuit Court, Chickasawba District.

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CR-18-402. Heath Carlton Stocks v. State of Arkansas, from Lonoke County Circuit Court.

CR-18-425. Edward Thompson v. State of Arkansas, from Pulaski County Circuit Court, Seventh Division.

CV-19-3. Otis D. Gipson v. State of Arkansas and Wendy Kelley, Director, Arkansas Department of Correction, from Pulaski County Circuit Court, Sixth Division.

CV-19-223. Hollis Devin Martz v. John Felts, Chairman, Arkansas Parole Board, from Jefferson County Circuit Court.

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**CASES SUBMITTED**

CV-19-287. Timothy Mack Clemmons v. Wendy Kelley, Director, Arkansas Department of Correction, from Chicot County Circuit Court.